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RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 3rd May, 1963:—

I

BILL NO. XVIII OF 1962

A bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, Short title. 1963.

2. In article 16 of the Constitution, in clause (4), after the words Amendment "shall prevent the State from making any provision", the words "by of article 16. law" shall be inserted.

3. In article 32, in clause (2), after the words "rights conferred by Amendment this Part", the words "and such directions or orders or writs shall of article 32. not be refused to any aggrieved party on the mere ground that the aggrieved party could have an alternative remedy elsewhere" shall be inserted.

4. After article 37 of the Constitution, the following article shall Insertion of new article be inserted, namely:— 37A.

"37A. All laws shall be interpreted by the courts in conformity with the directive principles of State policy as enumerated in this Part."

Amendment
of article
134.

5. In article 134 of the Constitution, in sub-clause (a) of clause (1), after the words "to death", the words "or imprisonment for life" shall be inserted.

Amendment
of article
226.

6. In article 226 of the Constitution, in clause (1), after the words "for any other purpose", the words "and such directions or orders or writs shall not be refused to any aggrieved party on the mere ground that the aggrieved party could have an alternative remedy elsewhere" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

Clause (4) of article 16 of the Constitution confers on the State unrestricted power for making any provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State is not adequately represented in the services under the State. While it is desirable to make special provision in favour of any backward class of citizens, it had often resulted in practice in the State, represented by the executive, making arbitrary decisions in deciding about the type of people who should be classified as backward class of citizens. It seems desirable to leave this matter to the respective legislatures rather than in the hands of the executive. Hence the proposed amendment to clause (4) of article 16.

In several cases of applications under article 32, the Supreme Court has refused to interfere on the mere ground that there is an alternative remedy available to a petitioner. This puts the petitioner to much expense as it forces him to resort to prolonged litigation. It seems necessary that the theory of "alternative remedy" should not form the basis for refusal by the judiciary to interfere and hence the proposed amendment to article 32. A similar amendment has also been proposed in article 226 in respect of High Courts.

The directive principles of State policy contained in Part IV of the Constitution though not enforceable by courts of laws, "are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". In keeping with the policy accepted by Parliament of creating a socialistic pattern of society in the country, it seems necessary that while interpreting laws the courts also ought to be guided by the principles set out in Part IV of the Constitution. Hence the proposed new article 37A.

At present article 134(1) (a) provides for an appeal to the Supreme Court in a criminal proceeding if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death. It seems proper that such right of appeal should be available also in a case where after reversal of an acquittal order a sentence of life imprisonment is awarded. Hence the proposed amendment to article 134.

K. V. RAGHUNATHA REDDY

II

BILL NO. VIII OF 1963

A bill further to amend the Mines Act, 1962.

BE it enacted by Parliament in the Fourteenth year of the Republic of India as follows:—

Short title
and
commence-
ment.

1. (1) This Act may be called the Mines (Amendment) Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of section
23.

2. In section 23 of the Mines Act, 1952 (hereinafter referred to as the principal Act), after sub-section (2), the following provisos shall be inserted, namely:—

35 of 1952.

“Provided that the authority shall submit an interim report of the inquiry within fifteen days of the accident:

Provided further that a copy of each of the reports, interim and final shall be made available to the workers on demand.

Amendment
of section
38.

3. In sub-section (2) of section 38 of the principal Act,—

(i) the word “also” shall be omitted;

(ii) after the words “the Inspector”, the words “and a copy of such report shall be supplied, on demand to the workers also” shall be inserted.

4. For section 40 of the principal Act the following shall be substituted, namely:—
- “40. No person below the age of twenty shall be permitted to work underground and no person below the age of twenty one shall be employed in the work of coalcutter or dresser or an underground trammer or a tubloader.
5. After section 46 of the principal Act, the following new section shall be inserted, namely:—
- “46A. No worker shall be employed underground unless he is given training in underground work for a period of at least three months.”
6. After section 72C of the principal Act, the following new section shall be inserted, namely:—
- “72D. If after the examination of the report of the Court of inquiry, Central Government finds the offence proved, it shall suspend the offender within a period of fifteen days of the submission of the report of the Court of Enquiry.”
- Substitution of section 40.
No person below the age of twenty to work underground.
- Insertion of new section 46A.
Compulsory training before employment underground.
- Insertion of new section 72D.
Suspension on the recommendation by the Court of Inquiry.

STATEMENT OF OBJECTS AND REASONS

Sub-section (2) of section 23 of the Mines Act, 1952, makes provision for an inquiry by the prescribed authority into an accident causing loss of life within two months of the receipt of notice of the accident. This period seems too long from more than one point of view. The suspense about the outcome of the inquiry and the nature of the report, the possibility of some evidence changing its very nature and some affected persons leaving the place or even dying as a result of the after effects of the accident during this two months' period, have to be considered. It is also imperative that the workers have to be kept in the know from the beginning of the course of inquiry so that they may render help in ensuring that all the available evidence is produced. The amendment proposed in clause 2 of the Bill makes provision for an interim report of the inquiry and for making a copy of each of the reports both interim and final, to be made available to the workers on demand so as to remedy the unsatisfactory nature of the present position pointed out above.

Sub-section (1) of section 38 makes certain exemptions from provisions regarding employment in the case of an emergency involving serious risk to the safety of the mine or of persons employed therein, etc. Sub-section (2) of the same section provides that every case in which action has been taken by the manager of a mine under sub-section (1) shall be recorded together with the circumstances relating thereto and the report thereof shall also be made to the Chief Inspector or the Inspector. The proposed amendment in clause 3 seeks to provide that a copy of such report shall also be supplied on demand to the workers so as to enable the workers to know how far their own rights have been affected by the action taken by the manager and what special remedies, if any, they are entitled to.

Section 40 of the Mines Act, 1952, at present provides for employment of adolescents below ground on certain conditions. This provision was apparently copied from the British mining legislation. Conditions of health in western countries, and in Great Britain in particular, are very much better than in our country. It seems dangerous to expose adolescent workers to the risks involved in the dusty, damp and dark condition and the foul weather

that prevails underground. Coal-cutting, tramming and tub-loading involve heavy strain. For all these reasons, it seems necessary to specifically debar persons below the age of 20 from under-ground work and also persons below the age of 21 from such arduous work as that of a coal-cutter, trammer or tub-loader. Hence the amendment proposed in clause 4.

Clause 5 seeks to insert a new section 46A providing that no worker shall be employed underground unless he has underground training for a period of at least three months. This seems an essential safeguard.

Clause 6 seeks to rectify a serious lacuna in the present Act. When a Court of inquiry finds the manager or any other person guilty of neglect or of negligence of mining technique, Government often takes a long time in deciding whether to prosecute the manager or the other person found guilty by the Court of inquiry. It is, therefore, necessary to prescribe in the statute itself that if the evidence is proved the offender shall be suspended within a prescribed period.

SEETA PARMANAND.

III

BILL No. IX OF 1963

A bill further to amend the Industrial Disputes Act, 1947.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title
and
commence-
ment.

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of section 2.

2. In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act),—

14 of 1947.

(a) Sub-clause (c) of clause (oo) shall be omitted;

(b) in clause (s),—

(i) for sub-clause (iii) the following shall be substituted, namely:—

“(iii) who has been appointed as a manager, an assistant manager or an administrative officer;”

(ii) in sub-clause (iv) the words “either by the nature of duties attached to the office or by reason of the powers

vested in him, functions mainly of a managerial nature" shall be omitted.

3. In section 25C of the principal Act, in sub-section (1), the brackets and words "(other than a *badli* workman or a casual work-
man)" shall be omitted. ^{Amendment of section 25C.}

STATEMENT OF OBJECTS AND REASONS

Sub-clause (c) of clause (oo) of section 2 of the Industrial Disputes Act, 1947 is capable of misuse by a management as it may enable the termination of the service of a workman on slightest grounds of ill-health on the pretext that such ill-health is continuous. The paucity of Government medical certifying agencies also is another factor which helps a management in this. It is clearly wrong that workers who have worked for the management for a long number of years should be discharged on grounds of health, and particularly when the sick leave due to them is very small, without any retrenchment benefit. There is also no provision for invalid pension for such workers. Hence the proposed amendment to delete the sub-clause.

The words "managerial or administrative capacity" are illusive and lend themselves to abuse in the matter of interpretation. It seems necessary to specify clearly in the Act itself the designations of the holders of this office. The proposed amendment to clause (s) of section 2 seeks to do this.

The words "other than a *badli* workman or a casual workman" used in section 25C of the Act are redundant. When the section itself clearly states "the workman whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer", the reference to *badli* workman in the section mentioned above therefore serves no useful purpose and should be omitted. Hence the proposed amendment in clause 3.

SEETA PARMANAND.

FINANCIAL MEMORANDUM

Sub-clause (a) of clause 2 of the Bill if enacted and brought into operation will involve expenditure from the Consolidated Fund of India in respect of the undertakings owned and managed by the Government of India, but in view of the large number of such undertakings the amount of expenditure cannot be anticipated with precision at this stage.

IV

BILL No. IV OF 1963

A bill further to amend the Indian Penal Code.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Indian Penal Code (Amendment) Act, 1963.

Insertion of
new section
293A.

2. After section 293 of the Indian Penal Code, the following section shall be inserted, namely:—

Act 45 of
1960

“293A. Nothing contained in section 292 or section 293 shall apply to any book, pamphlet, writing, drawing, painting, representation or figure meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning:

Provided that in the event of any dispute arising as to the nature of the publication, the opinion of experts on the subject may be admitted as evidence.”

STATEMENT OF OBJECTS AND REASONS

Under the present sections 292 and 293 of the Indian Penal Code, there is a danger of publications meant for public good or for *bona fide* purposes of science, literature, art or any other branch of learning being declared as obscene literature as there is no specific provision in the Act for exempting them from the operation of those sections. This Bill seeks to remove that lacuna so as to bring the law into conformity with modern practice in other civilised countries.

DIWAN CHAMAN LALL

S. N. MUKERJEE,
Secretary.

